RECENT CASES

AGENCY — TERMINATION OF AUTHORITY — WAR. — The defendant, an unnaturalized German, resident in England, being about to proceed to Germany executed a power of attorney appointing his solicitor his attorney to sell his house. The power of attorney was declared to be irrevocable for twelve months. A week later the defendant departed for Germany. There was evidence on which the court found that the defendant had reached Germany before the premises were sold to the plaintiff, under the power of attorney. The plaintiff as purchaser brings an action for a declaration that the agreement of sale had been dissolved by act of the defendant vendor in becoming an alien enemy. *Held*, that the power of attorney having been given by defendant at a time when he was not an alien enemy, being irrevocable, was not terminated by his becoming an alien enemy, and that the plaintiff was not entitled to have the agreement rescinded. *Tingley* v. *Müeller*, [1917] 2 Ch. 144.

For a discussion of this case, see NOTES, p. 637.

ALIENS — NATURALIZATION — ACTION TO CANCEL CERTIFICATE OF CITIZENSHIP. — The defendant entered the United States ignorant of the immigration laws, and was not registered. He was unable, therefore, to file with his petition for naturalization a certificate of arrival, as required by section 4 of the Naturalization Act (34 STAT. AT L. 596). The Iowa court, in which he sought naturalization, granted a certificate of citizenship in spite of this defect. This was a proceeding under section 15 of the Naturalization Act to cancel the certificate of citizenship. *Held*, that the certificate should be cancelled. *United States* v. *Ness*, 38 Sup. Ct. Rep. 118.

A proceeding under section 15 is a suit in equity to cancel the certificate "on the ground of fraud or on the ground that such certificate was illegally procured." The case depends on the construction of the phrase "illegally procured." The general rule of statutory construction is that, when there are general words following specific words, the general words must be confined to things of the same kind. See SUTHERLAND, STATUTORY CONSTRUCTION, §§ 268–281. Under this rule, it would seem that the certificate should not be set aside on the ground that it was "illegally procured," unless the facts amounted to something so serious as to be analogous to fraud. The Iowa court was a court of general jurisdiction, upon which the Congress of the United States had conferred the full judicial power "to naturalize aliens as citizens of the United States." The court should have refused citizenship, because of the failure to file a certificate of arrival. *In re Liberman*, 193 Fed. 301; *In re Hollo*, 206 Fed. 852. See *United States* v. *Ginsberg*, 243 U. S. 472, 474. But *cf. In re Page*, 206 Fed. 1004; *In re Schmidt*, 207 Fed. 678; *In re McPhee*, 209 Fed. 143. But section 15 does not provide for a general review of the action granting citizenship. The filing of the certificate of arrival was not a jurisdictional fact, and the granting of citizenship without it would seem not to be an illegality within the meaning of section 15. This was the view taken by the Circuit Court of Appeals. *United States* v. *Ness*, 230 Fed. 950. The case marks an interesting change in the attitude of the Supreme Court towards naturalization. *Cf. Boyd* v. *Nebraska ex rel. Thayer*, 143 U. S. 135.

ARREST — ARREST BEFORE REQUISITION — VALIDITY UNDER FEDERAL LAW. — A federal statute under the extradition clause of the Constitution provides that when the state having jurisdiction of the crime demands the fugitive, in due form, from the asylum state, "it shall be the duty of . . . the State . . .

to which such person has fled to cause him to be arrested" (R. S. § 5278). Plaintiff was arrested on the belief that she was implicated in a recent murder committed in another state. Investigation showed that the belief was unfounded, whereupon the plaintiff was discharged. The police acted solely on telegraphic communication; no warrant had been issued, nor had the prosecuting state made requisition. The question before the Supreme Court was whether such arrest before requisition was contrary to federal law. *Held*, that no federal right was infringed. *Burton* v. *New York Central, etc. R. Co.*, 38 Sup. Ct. Rep. 108.

Obviously the power of a state to arrest, within its borders, persons charged with having committed a crime elsewhere, arises not from any theory of authorization from another state, but from its own sovereignty, and is subject only to such duties and restrictions as it has empowered the federal government to impose. The statute in question makes it a duty to arrest when proper demand is made by the prosecuting state. But to imply from this a restriction that a state shall not arrest one under suspicion of crime committed in another state until the prosecuting state issues the papers of requisition is an unwarranted construction, and would seriously hinder the operation of interstate rendition. This was the only federal question involved; the decision is plainly right. At common law it has been uniformly held that arrest prior to requisition is legal. *In re Fetter*, 23 N. J. L. 311; *Simmons* v. *Van Dyke*, 138 Ind. 380, 37 N. E. 973; *State* v. *Taylor*, 70 Vt. 1, 39 Atl. 447. In many states the matter is specifically regulated by statute. *Ex parte Rosenblat*, 51 Cal. 285; *Ex parte Ammon*, 34 Ohio St. 518; *Malcolmson* v. *Scott*, 56 Mich. 459. See 2 MOORE, EXTRADITIONS AND INTERSTATE RENDITION, Appendix.

BANKS AND BANKING — NATIONAL BANKS — ASSESSMENTS — APPLICATION OF PAYMENTS. — A receiver was appointed for the insolvent, A. National Bank, which owned bonds, then worth sixty-five cents on the dollar on the market. A 100-per cent assessment was levied by the comptroller. The shareholders agreed to an apportionment of the bonds. All shareholders, except defendant savings banks, were to purchase their allotments at 95 cents on the dollar. Since defendants could not purchase such bonds they were to pay to the receiver the required advance over the market value, *i. e.*, 30 cents on the dollar, on the bonds allotted to them. This advance payment was equal to 82 per cent of the assessment. After the agreement was carried out the assessment was withdrawn. An action is brought against the savings banks on a second assessment of 49 per cent. *Held*, that the defendants are not liable. *Korbly* v. *Springfield Institution for Savings*, 38 Sup. Ct. Rep. 88.

Adopting the court's view that there was a contract between shareholders by which the savings banks were bound to pay to the receiver 30 cents on the dollar on the bonds allotted to them, since neither the banks nor the receiver made any express application of the payment made, the court should construe the acts of the parties to determine what application was actually made. See 21 HARV. L. REV. 623. But the real transaction appears to be a purchase of the bonds by those shareholders who had power, and a payment by all shareholders of 82 per cent of the first assessment. There is nothing denying the comptroller's power to withdraw an assessment as to that part unpaid. See U. S. REV. STAT. § 5151. The policy of the statute clearly favors such power. The comptroller has power to make successive assessments. *Studebaker* v. *Perry*, 184 U. S. 258. But the total liability of shareholders is limited to 100 per cent. See U. S. REV. STAT. § 5151. Therefore, an assessment of 49 per cent, after 82 per cent of the total liability was paid, was excessive and void.

COLOR OF TITLE — WHAT DIVESTS COLOR OF TITLE. — The owner of vacant land conveyed it to plaintiff by a valid warranty deed. Plaintiff was delin-